Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 754
Case No. 93-4
Text Amendment - 11 DCMR 218.7
March 14, 1994

Pursuant to a notice, public hearing was held by the Zoning Commission for the District of Columbia on November 22, and December 2, 1993. The Zoning Commission considered a petition from Mayor Sharon Pratt Kelly requesting the Commission to amend Subsection 218.7 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

The Petition which was filed on February 1, 1993, requested the Commission to permit the Board of Zoning Adjustment (BZA) to consider for approval more than 15 residents as a special exception for a youth residential care home in the R-1 zone district. The amendment also seeks to delete the phrase "of that area" from the clause "if there is no reasonable alternative to the program needs of that area of the District." The current Zoning Regulations permit the BZA to consider such special exceptions for community residence facilities only. The specific proposed language to amend the text of the Zoning Regulations is as follows:

> "The Board may approve a youth residential care home or a community residence facility for more than fifteen (15) persons, not including resident supervisors and their families, only if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location, and if there is no other reasonable alternative to meet the program needs of the District."

Amendments to the text of the Zoning Regulations of the District of Columbia are authorized, pursuant to the Zoning Act (Act of June 20, 1938, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed).

Pursuant to 11 DCMR 3011.1 and by memorandum dated February 9, 1993 the Office of Zoning (OZ) referred the petition to the Office of Planning (OP) for a preliminary report and recommendation.

By memorandum (preliminary report) dated March 25, 1993 the OP indicated, in part, the following:

> "The Office of Planning believes that these issues of clarification, and possibly policy, are of sufficient importance that a public hearing should be scheduled to consider the proposed amendments. Clarity and certainty in the regulations are important to the BZA, the affected community and the agency or organization proposing to operate a community-based residential facility."

At the public hearing sessions, the Commission considered the proposed amendments and heard the testimony of representatives of the District of Columbia Department of Human Services (DHS) who represented the petitioner in this case. The DHS stressed the need to clarify Subsection 218.7 of the Zoning Regulations and further testified as follows:

1. These amendments will help achieve compliance between local laws and the federal Fair Housing Amendments Act (FHAA) and the Americans With Disabilities Act (ADA);

2. A community residence facility and a youth residential care home operate in the same way, serving adults and young people respectively. It is irrational and potentially discriminatory to children to be more restrictive towards facilities for young people;

3. The intent of the Zoning Commission in establishing the rules for Community-Based Residential Facilities (CBRFs) is clear in Order No. 347: "Community residence facilities including those facilities licensed under D.C. Law 2-35, are permitted in the same zones in the same manner as youth residential care homes.";

4. A youth residential care home is not designed to serve detained or committed children. Youth rehabilitation homes are the facilities designed to serve such children, have different rules, and always require a special exception. There will be no dangerous children in these facilities; and

5. The regulatory phrase, "of that area," raises a definitional problem. What is the area -- a neighborhood, a ward, with what boundaries? These are the children of the District of Columbia, and a citywide approach is needed. It is not efficient to try to establish facilities based on particular neighborhoods. We are a small jurisdiction, and many types of clients fall into specialized categories. It is not practical

to provide many small, specialized programs in many parts of the city. Sometimes individuals need to be outside their neighborhoods.

By memorandum (final report) dated November 12, 1993 and through testimony at the public hearing, OP supported the proposed text amendments in this case. The OP emphasized its earlier position that clarity and certainty in the regulations are important to the BZA, the affected community and the agency or organization proposing to operate a community-based residential facility. It added that Social services of this type are quite important to the persons being served and the city's programs to meet this need and that it is not aware of any difference in operating characteristics between a community residence facility and a youth care home that would justify a different size limit in the special exception category.

At the public hearing, the Commission also heard the testimony of about 61 witnesses that included representatives of Advisory Neighborhood Commissions (ANCs) 3B, 5A, 6C, 3C, 1B, 1A, 5C, 2E, 3E, 2A, 3C, 8C and 7D, various citizen groups and individuals, in opposition to the proposed amendments. A summary of the opposition's testimony is as follows:

1. The home-sized CBRFs are acceptable to neighborhood groups; however, a CBRF with more than 15 residents is really an "institution" and establishment of these is not consistent with the general philosophy of deinstitutionalization and returning institutionalized clients to a neighborhood living environment. The size limit for these larger facilities should actually be reduced. The lack of a stated upper limit on size is a real problem;

2. Only small group homes, as presently allowed, should be permitted in residential zones. Large facilities should be located in appropriately zoned nonresidential or commercial areas of the city. These proposed institutions are not compatible with residential character, especially as to: traffic, noise, commercial deliveries, staff, visitors, on-street parking, and danger from clients;

3. Special exceptions are a major cause of neighborhood decline in the District. They are a one-sided process with the institutions and its lawyers against the neighborhood. The BZA routinely approves almost every special exception proposal. This has resulted in neighborhoods of the District becoming saturated with institutional uses to the point that residents are leaving the city;

4. ANCs and community groups cannot respond to this proposal because the government petitioners did not present the required reports and rationale for the text amendment. The case should be handled as a contested case, because it is really about the Hurt Home in Georgetown, which is the subject of litigation at present; and

5. The term "of that area ," should be retained; it provides at least some limitation on the BZA's authority to approve facilities. In the original case on CBRF rules (Zoning Commission Case No. 78-12), neighborhood representatives were promised that, if a facility having more than 15 residents were required, it would only be for the purpose of serving that neighborhood's needs.

At the close of the public hearing on December 2, 1993, the Commission requested Mr. Richard S. Beatty to submit documented information to support his testimony that Community Residential Facilities (CFR) were treated differently from Youth Residential Care Homes (YRCHs) because CRFs already had strict licensing requirements in place. The Commission also requested that DHS address this specific issue raised in Mr. Beatty's testimony, and left the record open to include Mr. Beatty's and the DHS submissions in the record of the case.

On February 14, 1994 at its regular monthly meeting, the Zoning Commission reviewed and discussed the OP summary/abstract report dated January 24, 1994 and all written post-hearing submissions in the record of the case. The post-hearing submissions included various resolutions unanimously passed by some of the ANCs that participated in the hearing proceedings, and letters from individuals, citizen groups, and organizations. All were in opposition to the proposed amendment.

The OP summary/abstract report highlighted the testimony in support and in opposition to the proposed amendment and reaffirmed its recommendations that the Commission approve the proposal.

The Commission also discussed Mr. Beatty's clarifying comments on the distinction between CRF and YRCH, and the response of the DHS to Mr. Beatty's comments.

The Commission did not concur with the OP recommendation and was not persuaded by DHS that the amendments will help achieve compliance between local laws and the federal Fair Housing Amendment Acts (FHAA) and the Americans With Disabilities Act (ADA).

The Commission concurred with the position of all the ANCs and determined that the proposed amendments will not be in the interest of the District of Columbia.

The Commission believes that a YRCH with more than 15 residents is not an appropriately sized facility of this type to be given special exception relief in the R-1 zone district.

In considering and balancing all the testimony relative to the proposal, the Commission believes that the proposed amendments are not in the best interest of the District of Columbia, and are inconsistent with the intent and purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia orders **DENIAL** of Z.C. Case No. 93-4.

Vote of the Zoning Commission taken at its regular monthly meeting on February 14, 1994: 3-1 (John G. Parsons, William L. Ensign and Maybelle Taylor Bennett, to deny - William B. Johnson, opposed and Jerrily R. Kress, not voting, not having participated in the case).

This order was adopted by the Zoning Commission at its regular monthly meeting on March 14, 1994, by a vote of 3-1: (William L. Ensign, John G. Parsons and Maybelle Taylor Bennett, to adopt - William B. Johnson, opposed and Jerrily R. Kress, not present, not voting).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAR 25 1994.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

MADELIENE H. ROBINSON
Director
Office of Zoning

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